

**DRAFT DIRECTIVE TRANSMITTAL**  
**WORKFORCE INVESTMENT ACT**

Number: WIADD-64

Date: December 30, 2003

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: PROCUREMENT AND DISPOSAL OF PROPERTY WITH A VALUE OF  
\$5,000 OR MORE

☒ **IMMEDIATE ACTION**

Bring this draft to the attention of the appropriate staff.

☒ **E-MAIL COPY TRANSMITTED**

Number of pages (including coversheet): 11

If there are any problems with this transmittal, please call Celia Guzman at 916/654-9767.

**SUBJECT MATTER HIGHLIGHTS:**

Please review and comment on the attached draft directive.

The objective of this directive is to provide guidance regarding the procurement and disposal of property with a value of \$5,000 or more. This directive provides information as to the procurement methods along with criteria to be considered when disposing of property with a residual value of \$5,000 or more (per unit). This directive does not replace Directive WIAD00-2 entitled "Procurement" dated August 24, 2000.

**COMMENTS ARE DUE BY:**

**1/16/04**

Comments can be submitted through one of the following ways:

- 1) **Web site** — [www.edd.ca.gov/wiarep/wiainp.htm](http://www.edd.ca.gov/wiarep/wiainp.htm)
- 2) **Fax** — WID, Attention: Grey S. Rider III at 916/654-9586
- 3) **E-Mail** — [grider@edd.ca.gov](mailto:grider@edd.ca.gov) (Include "draft comments" in the subject line)
- 4) **Mail** — WID / P.O. Box 826880 / MIC 69 / Sacramento, CA 94280-0001

All comments received by the end of the comment period will be considered before the final directive is issued. However, we will not be able to individually respond to comments. **Comments received after the specified due date will not be considered.**

If you have any questions, contact your WID Regional Advisor or Program Manager at (916) 653-6347.

# DRAFT DIRECTIVE

## WORKFORCE INVESTMENT ACT

Number:

Date:

69:136:lh:7285

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: PROCUREMENT AND DISPOSAL OF PROPERTY WITH A VALUE OF  
\$5,000 OR MORE

### EXECUTIVE SUMMARY:

#### Purpose:

This directive provides guidance on the procurement and disposal of property according to federal regulations. It identifies various purchase methods and provides guidelines for obtaining the State's approval to use Workforce Investment Act (WIA) federal funds. This approval is required prior to charging the WIA funds account for property with a unit cost of \$5,000 or more. Disposal procedures are described for property with a value of less than or greater than \$5,000.

#### Scope:

The requirements in this directive apply to all subrecipients who plan to direct charge the WIA federal funds account for a purchase. These requirements also apply to subrecipients that want to dispose of property with a value of less than or greater than \$5,000.

#### Effective Date:

This directive is effective upon date of issue.

### REFERENCES:

- Title 20 Code of Federal Regulations (CFR), WIA Final Rule, Section 667.260
- Title 29 CFR Part 95, Sections 95.34, 95.40 through 95.48 and 95.53
- Title 29 CFR Part 97, Sections 97.32, 97.36 and 97.42
- Office of Management and Budget (OMB) Circular A-87, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments
- OMB Circular A-122, Cost Principles for Non-Profit Organizations
- One-Stop Comprehensive Financial Management Technical Assistance Guide (Department of Labor – July 2002)
- WIA Draft Directive [WIADD-65](#), Subject: Allowable Costs (December 30, 2003)

## STATE-IMPOSED REQUIREMENTS:

This directive contains federal and State purchase and disposal requirements. The State-imposed requirements are printed in ***bold, italic type***.

## FILING INSTRUCTIONS:

Retain this directive until further notice.

## BACKGROUND:

The WIA Final Rule, Title 20 CFR Section 667.200, provides specific procurement guidance for the administration of the WIA program. This guidance includes direction and referral to Title 29 CFR Part 95 for institutions of higher education, hospitals and other nonprofit and commercial organizations, and to Title 29 CFR Part 97 for states and local governments. While the format and wording of Part 95 and Part 97 vary slightly, the intent of the federal government is consistent. The intent is that procurement policies must ensure free and open competition and must secure the best possible price. All recipients of WIA funds must have procedures in place for the purchase, use and disposal of property purchased with such funds.

Application of Property Regulations		
Relationship Type	Kind of Organization	Applicable Regulations
Recipient/Subrecipient	State and Local Government Entities	<b>Title 29 CFR Part 97</b> Equipment 97.32 Supplies 97.33 Copyrights 97.34
Recipient/Subrecipient	Nonprofit Organizations, Hospitals, and Institutions of Higher Learning	<b>Title 29 CFR Part 95</b> Equipment 95.34 Supplies 95.35 Copyrights 95.36

## DEFINITIONS:

*Equipment*—tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, including all costs related to the property's final intended use.

*Information Technology*—computer hardware and software. Purchase is only allowable when such computer technology is "Year 2000 compliant" (Title 20 CFR 667.200(c)(7)).

*Intellectual Property*—recognized protectable rights and interest such as: patents, copyrights, trademarks, service marks, etc. Also referred to as intangible property.

*Property*—durable goods, equipment, buildings, installations, and land.

**Subgrantee**—refers to all Local Workforce Investment Areas (LWIA) and other subrecipients of WIA federal funds.

Types of Property:			
Real	Personal		
Land, including land improvements, structures, and appurtenances thereto, but excluding moveable machinery and equipment (not generally allowable under the WIA program)	Tangible		Intangible
	Nonexpendable (Equipment)	Expendable (Supplies)	Without physical existence: patents, trademarks, or copyrights that are produced or acquired under the grant.
	Useful life of more than one year and a unit acquisition cost of \$5,000 or more.	Everything else.	

## POLICY:

***Each subgrantee in receipt of federal funds is responsible for complying with all applicable federal procurement requirements.*** Subgrantees must have general provisions that include, but are not limited to, the following:

- A written code of conduct for employees conducting procurements, including criteria regarding conflict of interest;
- A list of procurement types including when and how to use them;
- A description of noncompetitive procurement and the circumstances under which it can be used;
- Procedures to detail the review of prospective procurements to avoid purchase of unnecessary or duplicate items, including analysis of lease vs. purchase;
- A process that promotes the use of federal excess and surplus property wherever possible;
- A process to ensure that awards are made only to responsible contractors with the ability to perform successfully;
- Protest procedures to handle disputes related to both award and administration of contracts;
- Documentation of each of the significant steps followed in making an award to include selection criteria, agreement type, basis for contract price, and independent agency estimate of price;
- Requirements for a price or cost analysis; and
- A cost sharing process (whenever applicable).

## CAPITAL ASSETS AND CONSTRUCTION COSTS:

The WIA Title I funds must not be spent on construction or purchase of facilities or buildings except:

- To provide physical and programmatic accessibility and reasonable accommodation as required by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.
- To fund repairs, renovations, alterations and capital improvements of property including:
  1. State Employment Security Agency real property, identified at WIA Section 193, using a formula that assesses costs proportionate to space utilized.
  2. Job Training Partnership Act owned property, which is, transferred to WIA Title I programs.
- Job Corps facilities, as authorized by WIA Section 160(3)(B).
- To fund disaster relief employment on projects for demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within a disaster area.

## PROCEDURES:

***To direct charge the WIA funds account for any property purchase (including software purchases) with a per unit cost of \$5,000 or more, the following steps will occur:***

- 1. Subgrantees must complete a "Request for Approval to Charge WIA Funds for the Cost of Equipment" form (attached to this directive).***
- 2. The completed form must be submitted to their designated Regional Advisor or Program Manager.***
- 3. The Section Manager and Regional Advisor or Program Manager will review the form and either approve or disapprove the request.***
- 4. Once approval/disapproval is made by the Section Manager, the state will provide a written response within ten working days.***

If an approval letter is issued, the WIA funds account may be charged for the purchase. If the request is not approved and property is purchased, the subgrantee will incur a disallowed cost.

## PURCHASE CONSIDERATIONS:

In order to satisfy federal and State procurement requirements the following considerations must be made prior to direct charging WIA funds. These considerations are also on the approval form.

- Why is the purchase necessary/needed?
- Have the best products been selected?
- What procurement method will be used?
- Was a lease option considered in lieu of the purchase?
- What other costs are associated with the purchase?
- Is there a disposal plan for the outdated property?

## LEASING CONSIDERATIONS:

The decision to rent or buy personal property must be governed by considerations of economy. Consideration may differ by property type and according to market conditions. Thus, leasing generally is the least economical method of obtaining required equipment. Leasing with an option to purchase is generally preferable to straight leasing. However, for real property, administrative requirements make leasing the only option, as the construction or purchase of real property is not allowed under the WIA program except in certain limited circumstances.

## PURCHASING METHODS:

### 1. Sealed Bids

***Purchases in amounts of \$50,000 or more are made by sealed bid procedures.***

Sealed bids provide the best way of maintaining confidentiality of the vendor price. The alternative to the sealed bid process is the noncompetitive proposal (sole source) when there are not enough qualified bidders. The sealed bid process begins with issuance of an Invitation for Bid (IFB). The IFB defines the quantity, timeframes and product requirements. Vendors are notified of the purchase requirements and submit a sealed bid to be opened at a specific date and time. A diligent effort should be made to secure at least three competitive bids. If three competitive bids cannot be obtained, a list of firms or individuals contacted must be prepared. All bids are collected and opened at the appointed time. The bidder that submits the lowest bid and has the highest technical score is usually awarded the contract. Any bidder that falls outside of these desired parameters will normally have their bid rejected. Award of a firm fixed-price or fixed unit price contract by written notice is sent to the responsible lowest bidder.

**NOTE: The \$50,000 amount is a State requirement and breaks from the federal definition of a small purchase being \$100,000. The \$50,000 limit is to be used as a threshold for local board/governing board review.**

## 2. Small Purchase

When the dollar volume of a purchase is less than \$50,000 or where the competitive field is very limited, the use of informal quotations may be used. Informal quotations are easier to use in lieu of the more expensive and time consuming sealed bid method. Informal quotations may also be used to determine if previous prices are still in effect when dollar amounts are relatively small. The person requesting a quote by telephone must keep a record of the companies contacted, date of contact, and the price quoted. A prior sales receipt or current catalog with price lists may also be used for price quotations. When the range of bids received is such that a purchase is not in the best interests of the purchaser, all bids will be rejected. When all bids are rejected, all bidders will be advised.

Dollar Range of Purchase	Contacts and Method
\$1 to \$999	One quote or price
\$1,000 to \$9,999	Two documented quotes
\$10,000 to \$50,000	Three or more written quotes

For a purchase between \$1 and \$999, the sales receipt is sufficient documentation of the quote or price. For a purchase between \$1,000 and \$9,999, the documentation can include product or service catalogs, current price lists, or telephone contact with the vendors to obtain quotes. Catalogs and price lists should be updated annually. For a purchase between \$10,000 and \$50,000, the Request for Quote (RFQ) must either be provided in writing to the vendors or transmitted as uniformly as possible over the telephone. For the RFQ to be considered, the response must be signed and dated by the vendor. Purchases are not to be broken down into smaller components to avoid the more stringent procurement requirements.

## 3. Competitive Proposals

This method is typically used when the nature of the goods to be acquired cannot be defined as precisely as required by the sealed bid method. Competitive proposals are specifically used when factors other than price are important in the selection decision. Subgrantees must indicate in the Request for Proposal (RFP) the scope of work, the method for scoring the proposals, the deadline for receipt and the disputes process. A public notification of the RFP is normally given through an announcement in a local newspaper that covers the entire area. A copy of the RFP is sent to anyone who requests it along with prior bidders. A bidder's conference is usually held to allow interested parties to have any questions answered. Bidder's conferences also allow attendees to receive the same information. Bidders are given the exact date and time for the proposals to be received and opened. Each RFP is reviewed and evaluated as to the merits of the proposal. There should be a documented methodology for technical evaluation of each proposal. The review committee then makes a final recommendation as to which proposals best meet the stated requirements. Careful documentation of the successful bidder selection should be maintained for reference. After final review, a public notice needs to be posted advising all parties of the outcome. Notice of intent to award is provided and followed by the execution of the contract.



#### 4. Noncompetitive Proposals (sole source)

Noncompetitive proposals may be used under certain limited circumstances. Per the One-Stop Comprehensive Financial Management Technical Assistance Guide, the purchase **must be** infeasible under one of the other methods discussed above, and one of the following conditions apply:

- The item is available from only one source;
- Public emergency **precludes** delay (for example, a flood at the local day care center requires the immediate acquisition of additional services);
- The awarding agency authorizes the specific noncompetitive procurement (upon a formal request for approval);
- Competition is determined inadequate. This usually occurs after a competitive process has been **used** and there are insufficient bidders.

For all noncompetitive procurement actions, a cost analysis is required. The reason for selecting this method along with the justification for the selection should be carefully documented and maintained. The award document may be subject to later review and monitoring.

#### **DISPOSITION OF EQUIPMENT (GOVERNMENTAL AGENCIES):**

For equipment with a residual fair market value of \$5,000 or more, recipients of WIA funds must use the following guidelines (Title 29 CFR Part 97.32):

- The recipient may use the equipment in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds.
- If the equipment is no longer needed by the original program/project, the equipment may be used in other activities currently or previously supported by a federal agency.
- If the equipment is no longer needed by the program/project or for other activities currently or previously supported by a federal agency, the recipient may retain or sell the equipment and reimburse the state for the **federal share** of the equipment. The compensation due to the state is determined by multiplying the current fair market value or proceeds from the sale by the percent of WIA federal funds used in the equipment purchase. If only WIA federal funds were used for the purchase then the percentage would be 100 percent. If WIA federal and local **funds were** used in the purchase then the percentage split would be applied to the WIA federal funds. Actual and reasonable selling and handling expenses (\$500 or 10 percent, whichever is less) may be deducted from the proceeds of the sale. The balance of WIA federal funds must be submitted within 30 days to the address provided below. The name of the entity, subgrant number, year of appropriation, and funding stream must be provided when submitting the funds. These returned funds **will be** sent to the federal government once the state receives the funds.



Funds received from the sale of equipment should be sent to the following address:

Fiscal Programs Division, MIC 70  
Employment Development Department  
P.O. Box 826217  
Sacramento, CA 94230-6217

For equipment with a residual fair market value of less than \$5,000, recipients of WIA funds should try to retain the equipment if at all possible. In lieu of this, the equipment should be sold at a public auction if feasible. Sale proceeds will be used to offset future equipment purchases. If the program is being terminated then the proceeds of the sale should be sent to address noted above. Keep a disposition record for any such transactions.

**DISPOSITION OF EQUIPMENT (COMMUNITY BASED ORGANIZATIONS, INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT AND COMMERCIAL ENTITIES):**

For equipment with a residual fair market value of \$5,000 or more, recipients of WIA funds should take the following steps (Title 29 CFR Part 95.34):

- The recipient may use the equipment in the program or project for which acquired as long as needed, whether or not the project or program continues to be supported by federal funds.
- If the equipment is no longer needed by the original program/project, the recipient shall use the equipment in connection with its other federally sponsored activities, in the following order of priority:
  1. Activities sponsored by the Department of Labor.
  2. Activities sponsored by other federal awarding agencies.
- If the equipment is no longer needed by the program/project or used in connection with other federally sponsored activities, the recipient may retain the equipment for other uses. If the equipment is retained then compensation must be made for the WIA federal funds used in the purchase. The amount of compensation shall be computed by applying the percentage of WIA federal funds used in the purchase. If only WIA federal funds were used for the purchase then the percentage would be 100 percent. If WIA federal and local funds were used in the purchase then the percentage split would be applied to the WIA federal funds. This percentage is applied to the fair market value or proceeds of the sale for the equipment. Recipients of subgrants are permitted to deduct actual reasonable selling and handling expenses (\$500 or 10 percent, whichever is less) from the proceeds of the sale. The balance of WIA federal funds must be sent within 30 days to the address provided below. The name of the entity, subgrant number, year of appropriation and funding stream must be provided when submitting the funds. These returned funds will be sent to the federal government once the state receives the funds.

Funds received from the sale of equipment should be sent to the following address:

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Employment Development Department  
P.O. Box 826217  
Sacramento, CA 94230-6217

- If the recipient has no further use of the equipment and wishes to dispose of the equipment (other than selling the equipment), they must request disposition instructions from the State.

For equipment with a residual fair market value of less than \$5,000, recipients of WIA funds should try to retain the equipment if at all possible. In lieu of this, the equipment should be sold at a public auction if feasible. Sale proceeds will be used to offset future equipment purchases. If the program is being terminated then the proceeds of the sale should be sent to address noted above. Keep a disposition record for any such transactions.

#### **CALCULATION OF “FAIR MARKET” VALUE:**

The selling price of an item that is sold through auction, advertisement, or a dealer is the fair market value of the item regardless of any prior estimates. An item that is not sold but retained by the entity has a fair market value based on similar items that are offered for sale, using the selling price if known. Methods for determining fair market value include, but are not limited to:

- Auctions
- Classified advertisements for similar used items
- Dealers
- Licensed appraisers

For automobiles, trucks, and vans, the standard authority on the value of used vehicles is the Kelley Blue Book.

#### **PROPERTY RECORDS:**

Subgrantees must maintain accurate records of all equipment purchased with federal funds. All equipment should have a unique identification mark to be used for inventory purposes. A physical property inventory must be taken and reconciled with the property records at least once every two years. The equipment records shall include the following information:

1. A description of the equipment.
2. Manufacturer's serial number, model number, Federal Stock number, national stock number, or other identification number.
3. Source of the equipment, including the award number.
4. Whether title vests in the recipient or the federal government.

5. Acquisition date (or date received, if the equipment was furnished by the federal government).
6. Cost at acquisition.
7. Records showing maintenance procedures to keep the equipment in good operating order.
8. Location and condition of the equipment and the date the information was reported.
9. Unit acquisition cost.
10. Disposition date, sale price, loss, theft, etc.

#### **RECORDS RETENTION:**

All equipment records must be maintained from date of acquisition, through final disposition. Subgrantees must also retain those records for a period of three years from the date of their last expenditure report submitted to the Workforce Investment Division. If any litigation, claim, or audit is started before the expiration of the three-year period, **ALL** records must be retained until all findings have been resolved and final action taken.

#### **ACTION:**

Bring this directive to the attention of all affected staff and subrecipients.

#### **INQUIRIES:**

Please direct inquiries about this directive to your assigned Regional Advisor or Program Manager at (916) 653-6347.

BOB HERMSMEIER  
Chief  
Workforce Investment Division

Attachment is available on the Internet:

[Request for Approval to Charge WIA Funds for the Cost of Property](#) (DOC)